

13.01.2022

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Sl. No. 06

Ct. No. 05

WPA 9789 of 2014

[Via Video Conference]

Dr. Munmun Chatterjee

-Versus-

The State of West Bengal & Ors.

Mr. Partha Sarathi Bhattacharyay

Mr. Saikat Chatterjee

..... for the petitioner

Mr. Jahar Lal De

Mr. Shamim Ul Bari

..... for the State

Mr. Indranil Chandra

Mr. A. Sarkar

... for the respondent Nos. 5 & 6

The issue in this writ petition is whether the petitioner should be entitled to special study leave from 18th August, 2021 to 17th August, 2003 with full pay or not.

Learned counsel appearing for the petitioner relies upon three documents from the President of the Governing Body dated 24th July, 2021, extract of a resolution of the Governing Body dated 20th August, 2002 and communication of the Registrar of the University dated 23rd July, 2010 by which the petitioner's study leave for two years was granted with full pay. The contention of learned counsel would be corroborated by learned counsel appearing for the

Principal and the College authorities in terms of a letter dated 30th October, 2009 which also confirms that the petitioner is entitled to two years study leave with full pay under the University Act. Learned counsel places an amendment which was brought into effect from 12th September, 2013 by which full pay would be given only for a period not exceeding 12 months but counsel submits that the said amendment can only be treated as prospective in nature. Counsel also places Ordinance Nos. 26 and 27 which were in force at the time of the petitioner applied and was given study leave for two years.

Learned counsel appearing for the State refers to two Ordinance Nos. 26 and 27 which were in force at the relevant point of time and submits that while the first period of one year-study leave was to be given with full pay, the authorities thought it fit not to extend the same benefit in the 2nd period for one year (special study leave), which cannot be ignored by the Court. It is also submitted that the Registrar of the university cannot be considered as having any power or authority to grant study leave for two years to the petitioner with full pay.

Upon considering the submissions of learned counsel, it appears that the decision to grant full pay for the period of 18.08.2001 to 17.08.2003 to the

petitioner was also taken by the Governing Body of the University on 20th August, 2002. Admittedly, the Governing Body consists a government nominee on the Board. Subsequently, the said resolution of 2002 was confirmed by the concerned College on 30th October, 2009 and was again confirmed by the Registrar on 23rd July, 2010. Even if this Court were to expect that the Registrar cannot act on behalf of the University in matters of deciding whether the special study leave should be accompanied with full pay or not, the decision of the Governing Body of 20th August, 2002 stood remain undisturbed until 6th March, 2013 when the impugned decision was taken by the Joint Secretary that the petitioner would be granted study leave but without pay for the period 18.08.2002-17.08.2003.

It is also of significance that the decision of the Governing Body was taken in 2002 prior to the amendments of the relevant Ordinance in 2013. Although St. 41 gives the power to the University for interpreting, in the event, any controversy arising from the provisions of the statute, the Governing Body of the University decided to extend the benefit to the petitioner in 2002 which remained in place for 11 years thereafter until the impugned decision was taken on 6th March, 2013. The other factor which is important is

that the benefit of study leave for two years with full pay was given to another similarly situated person on 31st July, 2014 after the amendment was brought into effect from 12th September, 2013. This would mean that the petitioner is being discriminated again since the amendment has been given totally different construction in relation to a similarly placed candidate which has not been extended to the petitioner.

In view of the above reasons, the impugned order of the Joint Secretary dated 6th March, 2013 cannot be sustained. This is all the more since the petitioner has already received full pay pursuant to the decision taken by the Governing Body of the university started by the communication of the Principal of the concerned College in October, 2009.

WPA 9789 of 2014 is accordingly allowed and disposed of in terms of prayers 'c' and 'e'.

The respondent shall be restrained from taking any steps pursuant to the decision dated 6th March, 2013 in the matter of recovery of any amount from the petitioner or otherwise or any other manner whatsoever.

(Moushumi Bhattacharya, J.)